



Comptroller General
of the United States
Washington, D.C. 20548

Burkard

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Decision

Matter of: Thomas M. Ubl--Reconsideration

File: S-245618.2

Date: November 1, 1991

Thomas M. Ubl for the protester,
Richard P. Burkard, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

General Accounting Office affirms its dismissal of protest
against agency's failure to issue an amendment to
solicitation where protester has not shown that it was
prejudiced by the agency's allegedly improper action.

DECISION

Thomas M. Ubl requests that we reconsider our decision dated
September 12, 1991, summarily dismissing its protest under
solicitation No. 31-1267, issued by the Defense Logistics
Agency, Defense Reutilization and Marketing Region-Memphis,
for the sale of surplus government property consisting of
drums of freon. Ubl alleged that the agency improperly
reduced the quantity of drums offered for sale without
issuing an amendment to the solicitation advising potential
bidders of the reduction.¹ We dismissed the protest
because it did not establish the likelihood of a violation of
law or regulation by the agency.

We affirm our dismissal.

The solicitation contained a line item which indicated that
154 drums of freon were offered for sale, and stated that
bids were due by September 19, 1991. The protester has
advised our Office that on September 10 it learned that the
quantity of drums offered for sale would be reduced from

¹We consider such protest allegations under 4 C.F.R. § 21.11
(1991), as the Defense Logistics Agency, by letter dated
January 13, 1987, has agreed to our considering bid protests
involving its surplus property sales. Mansfield Assocs.,
Inc., B-242270, Mar. 13, 1991, 91-1 CPD ¶ 284.

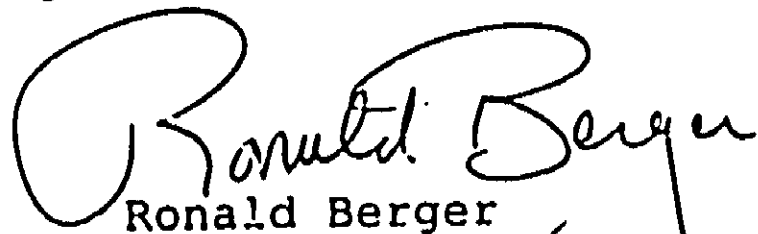
154 to 109. The protester states further that the agency did not issue an amendment to the solicitation notifying potential bidders of the correct quantity of drums which were being offered for sale.

The agency has advised our Office that it received 18 bids for the drums and that the protester did not submit a bid. The agency also states that the number of drums actually available for sale at the time of bid opening was 109.

Prejudice is an essential element of any viable protest. Universal Technologies, Inc.--Recon., B-241157.2, May 24, 1991, 91-1 CPD ¶ 505. We do not see how, under the circumstances here, the protester was prejudiced by the agency's failure to issue a written amendment to the solicitation. While the protester asserts that the reduction of the number of drums offered for sale required it to "readjust" its bid, it is unclear how the protester's knowledge of the correct number of drums could have adversely affected its ability to compete. Indeed, the protester had more accurate information than its competitors in calculating its price for the drums.

While its position is not altogether clear from its protest submissions, the protester seems to argue that it was entitled to the benefit of the full 154-drum sale. We do not understand the basis for this view since the protester also appears to acknowledge that the agency "has the authority to release the 45 drums" and does not dispute the fact that another firm holds a contract with the agency which entitles it to purchase some of the surplus freon drums.

We again conclude that the protester has not shown how the agency's actions here might have been in violation of law or regulation. Accordingly, the dismissal is affirmed.


Ronald Berger
Associate General Counsel